

Message Text

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ORIGIN L-03

INFO OCT-01 INRE-00 NSCE-00 SSO-00 PM-05 ACDA-12
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SOE-02 DODE-00 DOE-11 SS-15 SP-02 ARA-10 CEQ-01
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DRAFTED BY:L/N:RDSLOAN:AVW
APPROVED BY:OES/NET:LVNOSENZO
OES:MOFFITT
DOE:IZELL
IO:JILLSON (INFO)
ARA/ECA:RONDON
ACDA:MARSHALL
DOE/IA:MCFADDEN (SUBST)
ARA/AND/P:KEMP

-----121198 110657Z /13

O 110019Z FEB 78
FM SECSTATE WASHDC
TO AMEMBASSY VIENNA IMMEDIATE
INFO AMEMBASSY BUENOS AIRES IMMEDIATE
AMEMBASSY LIMA IMMEDIATE

C O N F I D E N T I A L STATE 036554

VIENNA FOR IAEA

E.O. 11652: GDS

TAGS: PARM, MNUC, IAEA, TECH, AR, PE, US

SUBJECT: U. S. FUEL FOR ARGENTINA REACTOR LOAN TO PERU

REFS: (A) VIENNA 01129 (B) STATE 28755

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1. RE REFTEL (A) PARA 1 (A), WE REMAIN CONVINCED THAT LANGUAGE USED IN PARA 8 OF REFTEL (B) NECESSARY CONCERNING PERU'S UNDERTAKING NOT TO MANUFACTURE OR DEVELOP ANY NUCLEAR WEAPONS OR NUCLEAR EXPLOSIVE DEVICES FOR ANY PURPOSE. SINCE WE DO NOT SIGN THE PROJECT AGREEMENT WE REQUEST USE OF THIS LANGUAGE ONLY IN SUPPLY AGREEMENT. WHILE DIFFERENT FORMULATIONS OF THIS UNDERTAKING MAY HAVE BEEN ACCEPTED IN THE PAST, THE LANGUAGE WE HAVE UTILIZED IS FOUND IN THE U.S. DRAFT MODEL AGREEMENT FOR COOPERATION AND IN THE NUCLEAR NON-PROLIFERATION LEGISLATION (WHICH PASSED THE CONGRESS ON FEBRUARY 9). IT IS OUR INTENTION THAT THIS LANGUAGE BE USED IN ALL FUTURE AGREEMENTS

FOR COOPERATION AND SUPPLY AGREEMENTS.

2. RE REFTEL (A) PARA 1 (D), WE PROPOSE THE FOLLOWING SUPPLY AGREEMENT LANGUAGE WHICH WOULD INDICATE TO ARGENTINA AND PERU THAT THE U.S. WOULD APPROVE THE FUEL TRANSFER PROMPTLY. "THE GOVERNMENT OF THE UNITED STATES SHALL APPROVE THE TRANSFER DESCRIBED ABOVE PURSUANT TO THE

ARGENTINA-UNITED STATES COOPERATION AGREEMENT. UPON TRANSFER TO PERU, THE SUPPLIED MATERIAL SHALL BE SUBJECT TO THE TERMS AND CONDITIONS OF THE UNITED STATES-IAEA COOPERATION AGREEMENT." WE CAN NOW ASSURE ARGENTINES THAT TRANSFER WOULD BE APPROVED WITHIN 15 DAYS OF FILING OF TRANSFER APPROVAL REQUEST FORM BY ARGENTINA AND THE IAEA WITH THE UNITED STATES. AMBASSADOR SMITH WILL BE ABLE TO CONFIRM THIS AT IAEA BOARD MEETING. WE SHOULD NOTE THAT ARGENTINA WOULD BE ABLE TO FILE THE APPROPRIATE RETRANSFER APPROVAL REQUEST FORM WITH THE UNITED STATES PRIOR TO THE ENTRY INTO FORCE OF THE SUPPLY AGREEMENT SO THAT THE ADMINISTRATIVE PROCEDURES REQUIRED WITHIN THE USG COULD BEGIN IMMEDIATELY UPON THE ENTRY INTO FORCE OF THE SUPPLY AGREEMENT. CONFIDENTIAL

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3. RE REFTEL (A), PARAS 1 (E) AND (F) WHILE WE ARE ANXIOUS TO FACILITATE THIS ENTIRE TRANSACTION AND ARE WILLING TO ACCEPT EXTRAORDINARY PROVISIONS IN SUPPLY AGREEMENT TO ACCOMPLISH THIS END, WE MUST INSIST ON CERTAIN MINIMUM CONDITIONS WITH RESPECT TO RETURN OF FUEL TO ARGENTINA. THESE CONDITIONS ARE DICTATED BY FACT THAT NEW NON-PROLIFERATION ACT IMPOSES CERTAIN REQUIREMENTS FOR EXPORT OF SPECIAL NUCLEAR MATERIAL FROM U. S. AND THAT ANY U.S. APPROVAL OF A RETRANSFER OF SNM FROM PERU TO ARGENTINA AT A TIME WHEN THERE MIGHT BE NO APPLICABLE U.S.-ARGENTINA AGREEMENT FOR COOPERATION IN EFFECT WOULD BE SEEN AS A FORM OF NUCLEAR COOPERATION WHICH WOULD BE POLITICALLY UNACCEPTABLE. WE SHOULD NOTE THAT USG ONLY RECENTLY FOCUSED ATTENTION ON RETURN OF FUEL TO ARGENTINA SINCE IT WAS ALWAYS ASSUMED (BASED ON DISCUSSIONS WITH ARGENTINA) THAT FUEL WOULD REMAIN IN PERU. IN LIGHT OF CARRERA'S CONCERN THAT ARGENTINE RIGHT OF RETURN OF TRANSFERRED FUEL IS NOT BEING ADEQUATELY PROTECTED, WE ARE WILLING TO ALTER LONGSTANDING U.S. POLICY AGAINST ADVANCE APPROVALS OF ANY KIND TO GUARANTEE IN ADVANCE RETURN OF FUEL TO ARGENTINA SO LONG AS THERE IS THEN IN FORCE A U.S.-ARGENTINA COOPERATION AGREEMENT. WE PROPOSE ONE OF FOLLOWING OPTIONS TO ACCOMPLISH THIS: (A) ARTICLE I, SECTION 3 OF THE SUPPLY AGREEMENT WOULD READ: "THE GOVERNMENT OF PERU UNDERTAKES THAT THE SUPPLIED MATERIAL SHALL NOT BE RETRANSFERRED BEYOND ITS JURISDICTION UNLESS OTHERWISE AGREED TO BY THE PARTIES TO THIS AGREEMENT, PROVIDED THAT UPON THE REQUEST OF PERU AND ARGENTINA

WHICH SHALL BE MADE NO LATER THAN AUGUST 15, 1979, AND FOLLOWING CONSULTATIONS WITH THE AGENCY, THE U.S. SHALL APPROVE THE RETURN OF THE MATERIAL AND IT SHALL BE TRANSFERRED TO ARGENTINA NO LATER THAN FEBRUARY 15, 1980. THIS TRANSFER SHALL BE SUBJECT TO THE APPLICABLE U.S.-ARGENTINA AGREEMENT FOR COOPERATION."
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ARGENTINA MAY PREFER THIS FORMULATION. IT IS DESIGNED TO MESH WITH THE NEW U.S. NON-PROLIFERATION ACT (SECTION 128 (B)) RE DIRECT EXPORTS FROM THE US.

(B) THE OTHER OPTION FOR ARTICLE I, SECTION 3 LANGUAGE IS THE FOLLOWING:

"THE GOVERNMENT OF PERU UNDERTAKES THAT THE SUPPLIED MATERIAL SHALL NOT BE RETRANSFERRED BEYOND ITS JURISDICTION UNLESS OTHERWISE AGREED TO BY THE PARTIES TO THIS AGREEMENT, PROVIDED THAT 18 MONTHS AFTER THE TRANSFER OF THE SUPPLIED MATERIAL TO PERU, THE UNITED STATES SHALL, UPON THE REQUEST OF PERU AND ARGENTINA AND FOLLOWING CONSULTATIONS WITH THE AGENCY, APPROVE ITS RETURN TO ARGENTINA PROVIDED THAT UPON RETURN TO ARGENTINA, THE MATERIAL SHALL BE SUBJECT TO THE APPLICABLE U. S.-ARGENTINA AGREEMENT FOR COOPERATION. IF AT ANY TIME FOLLOWING THE RETURN OF THE FUEL TO ARGENTINA, THE U.S.-ARGENTINA AGREEMENT FOR COOPERATION IS TERMINATED FOR ANY REASON, THE UNITED STATES WOULD HAVE THE RIGHT TO PURCHASE THE FUEL FOR ITS FAIR MARKET VALUE AND TO HAVE IT REMOVED TO THE UNITED STATES."

AT ARGENTINA'S OPTION WE WOULD PLACE THE "BUY-BACK" PROVISION IN THIS OPTION IN ARTICLE I, SECTION 3 OF THE SUPPLY AGREEMENT OR, AFTER APPROPRIATE STYLISTIC REVISIONS, IN A U.S.-ARGENTINA EXCHANGE OF NOTES.

4. CHANGE PROPOSED IN REFTTEL PARA 1 (G) IS ACCEPTABLE.
5. RE REFTTEL PARA 1 (H), WE PROPOSE THAT THE PROVISIONS IN QUESTION BE REMOVED FROM THE SUPPLY AGREEMENT SINCE A PROVISION FOR BACKUP SAFEGUARD RIGHTS IS NOW CONTAINED IN THE EXCHANGE OF NOTES BETWEEN THE U. S. AND PERU. A SLIGHT REVISION IN THE LANGUAGE CONTAINED IN THE U.S. NOTE TO
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PERU HAS BEEN MADE SO THAT THE BACKUP SAFEGUARDS SPECIFICALLY ENSURE THAT PERU'S ARTICLE V, SECTION 9 UNDERTAKING WOULD ALWAYS BE FULFILLED.

6. RE REFTTEL (A) PARA (I), WE HAVE NO OBJECTION TO PLACING THE REPROCESSING PROVISION IN ARTICLE I OF THE SUPPLY AGREEMENT, AND HAVING IT REFER ONLY TO THE U.S., ARGENTINA, AND PERU. WE REQUEST CONTINUING TO COVER "STORAGE" IN THIS PROVISION SINCE SUCH COVERAGE IS NOW INCLUDED IN THE

U. S. DRAFT MODEL AGREEMENT FOR COOPERATION AND IN THE NUCLEAR NON-PROLIFERATION LEGISLATION. THUS, THIS PROVISION WOULD BE MODIFIED SO THAT THE FIRST SENTENCE WOULD END "ACCEPTABLE TO THE GOVERNMENTS OF THE UNITED STATES, ARGENTINA AND PERU." THE SECOND SENTENCE WOULD END, "BETWEEN THE GOVERNMENTS OF THE UNITED STATES, ARGENTINA, AND PERU."

7. RE REFTEL (A) PARA 1 (J), WE AGREE TO AMEND THE LANGUAGE REFERRED TO SO THAT IT WOULD NOW READ: "WHICH LEVELS MAY BE MODIFIED BY MUTUAL CONSENT OF THE GOVERNMENTS OF THE UNITED STATES, ARGENTINA AND PERU WITHOUT AMENDMENT TO THIS AGREEMENT." WE HAVE ALSO AGREED TO PLACE THE PROVISION REGARDING REVIEW OF PHYSICAL PROTECTION MEASURES IN THE EXCHANGE OF NOTES BETWEEN THE UNITED STATES AND PERU. THE RELEVANT PARAGRAPH IN THE U.S. NOTE WOULD READ:

"THE GOVERNMENT OF PERU AND THE GOVERNMENT OF THE U.S. SHALL PERIODICALLY EXCHANGE INFORMATION CONCERNING THE PHYSICAL PROTECTION MEASURES MAINTAINED BY PERU PURSUANT TO ARTICLE VII OF THE SUPPLY AGREEMENT. THE ADEQUACY AND IMPLEMENTATION OF THESE PHYSICAL PROTECTION MEASURES MAY BE REVIEWED BY THE GOVERNMENT OF PERU AND THE GOVERNMENT OF THE U. S. FROM TIME TO TIME, WHENEVER EITHER GOVERNMENT IS OF THE VIEW THAT A REVISION MAY BE REQUIRED TO MAINTAIN ADEQUATE PHYSICAL PROTECTION."

8. RE REFTEL (A) PARA 1 (K), WE FIND THE LANGUAGE PROPOSED
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TO BE HELPFUL BUT NOT IN COMPLETE ACCORD WITH WHAT WE FEEL IS LEGALLY REQUIRED. WE WOULD PROPOSE THE FOLLOWING ALTERNATIVES WHICH ARE LISTED IN THE ORDER OF OUR PREFERENCE FOR THEM:

(A) "NOTWITHSTANDING ANY CLAIMS REGARDING THE SUSPENSION OR TERMINATION OF THIS AGREEMENT OR THE SUSPENSION OR TERMINATION OF ANY COOPERATION HEREUNDER FOR ANY REASON, ARTICLES I, V, VI, AND VII SHALL CONTINUE IN EFFECT..."
OR (B)"THIS AGREEMENT SHALL CONTINUE IN EFFECT SO LONG AS ANY NUCLEAR MATERIAL WHICH WAS EVER SUBJECT TO THIS AGREEMENT REMAINS IN THE TERRITORY OF THE REPUBLIC OF PERU..."

AS WE HAVE INDICATED, WE FEEL THAT LANGUAGE ALONG THESE LINES IS NECESSARY TO ENSURE THAT THE MOST IMPORTANT PROVISIONS OF THE SUPPLY AGREEMENT WILL CONTINUE IN EFFECT AS LONG AS ANY OF THE MATERIAL REMAINS IN PERU.

9. FOR LIMA: RE LIMA 1160 (NOTAL), DELAY IN TRANSMITTAL OF EXCHANGE OF NOTES BETWEEN THE U.S. AND PERU HAS BEEN DUE TO CONTINUING NEGOTIATIONS BETWEEN THE FOUR PARTIES TO THE QUADRIPARTITE SUPPLY AGREEMENT. WE WILL TRANSMIT AS SOON AS POSSIBLE A TEXT OF PROPOSED EXCHANGE OF NOTES

WHICH MESH WITH THE REVISED SUPPLY AND PROJECT AGREEMENTS
NOW BEING NEGOTIATED IN VIENNA. THE ONLY CHANGES MADE IN
THE NOTES AGREED UPON DURING NOSENZO/BARRERA DISCUSSIONS
LAST WEEK ARE THOSE REQUIRED BY THE REMOVAL OF CERTAIN
LANGUAGE FROM THE REVISED QUADRILATERAL SUPPLY AGREEMENT.

10. FOR BUENOS AIRES AND VIENNA: COPY OF EXCHANGE OF
NOTES BETWEEN U. S. AND PERU TO FOLLOW ASAP.

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<< END OF DOCUMENT >>

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